

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5492 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

SIKANDAR @ JUMI MOHMADKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
Mr.Gadhvi, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/02/99

ORAL JUDGEMENT

1. The prayer of the petitioner in this writ petition under Article 226 of the Constitution of India is to quash the detention order dated 29.6.1998 (Annexure : B) to the writ petition passed by the Commissioner of Police, Vadodara city, under Section 3(2) of the Prevention of Anti-social Activities Act (for short 'PASA').

2. The detaining Authority, upon consideration of two registered offences against the petitioner under the Bombay Prohibition Act and also considering the statements of three confidential witnesses, came to subjective satisfaction that the petitioner is a bootlegger within the meaning of Section 2(b) of the PASA and that his activities were prejudicial for maintenance of public order. Accordingly the impugned order of detention was passed which has been challenged on two grounds. The first is that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and the second is that the representation of the petitioner sent by his Advocate on 18.7.1998 was not considered by the State Government rather it was returned for compliance that vakalatnama, authority letter from the petitioner and his signature be obtained on the representation and then it should be resubmitted for consideration.

3. Having heard the arguments of the learned Counsel for the petitioner and the learned A.G.P. I feel that petition succeeds on three grounds.

4. So far as return of representation of the petitioner dated 18.7.1998 is concerned there was absolutely no justification for the State Government to insist for additional compliance, viz. filing of Vakalatnama or authority letter or signature or thumb impression of the petitioner. When representation was sent by the Advocate mentioning that it was sent under the instructions of the detenu no further compliance was needed. There is no provision of law under which Vakalatnama or authority letter from the detenu was required to be annexed nor is there any authority or provision of law that signature or thumb impression of the detenu should be obtained. On the other hand the Apex Court has taken a contrary view in Balchand Chorasia

v/s. Union of India, reported in AIR 1978 SC 297 that when representation is sent by Advocate it should be dealt with on merits and should not be tackled technically because the rights and liberties of detenu are curtailed. It seems that the stand of the State Government insisting for additional compliance is contrary to the verdict of the Apex Court. Hence non-consideration of representation of the petitioner has rendered the detention and continued detention of the petitioner illegal. This is a ground for quashing the impugned order.

5. Another ground for quashing the impugned order is that the activities of the petitioner arising from two registered offences under the Bombay Prohibition Act cannot be said to be prejudicial for maintenance of public order nor the incidents narrated by three confidential witnesses can be said to be prejudicial for maintenance of public order. If the activities of the petitioner were not prejudicial for maintenance of public order then merely because he is a bootlegger he cannot be preventively detained. This is another ground for quashing the impugned order.

6. The last ground which was not addressed by the learned Counsel for the petitioner is that clear indication is found from the ground of detention especially the statements of three confidential witnesses that ground No.2 in the grounds of detention was made known to the witnesses before their statements were recorded. For this the following line in the three statements of confidential witnesses can be pressed in service :

"The facts of Para No.2 is justified".
This line appears in the statement of all the three confidential witnesses.

7. The preceeding Para : 3 of the grounds of detention shows in concluding portion that brief facts of the statements narrated by the witnesses are as under.

8. From these two narrations it can be said that contents of Para : 2 of the grounds of detention were made known to the witnesses which further implies that the grounds of detention were formulated and then the material in the shape of statements of three confidential witnesses was collected. The necessary implication is that the detaining Authority proceeded to pass the detention order without looking to the entire material justifying arriving at subjective satisfaction regarding

activities of the petitioner being prejudicial for maintenance of public order.

9. For the reasons stated above the impugned order cannot be sustained. The writ petition, therefore, succeeds and is hereby allowed. The detention order dated 29.6.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

sd/-

Date : February 04, 1998 (D. C. Srivastava, J.)

sas